

Marc E. Elias
Graham M. Wilson
PHONE: (202) 434-1638
FAX: (202) 654-9154
EMAIL: MElias@PerkinsCoie.com
GWilson@PerkinsCoie.com

Perkins
Coie

700 Thirtieth Street, N.W., Suite 600
Washington, D.C. 20005-3960
PHONE: 202.654.6200
FAX: 202.654.6211
www.perkinscoie.com

June 28, 2013

Mr. Jeff S. Jordan
Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: MUR 6734

Dear Mr. Jordan:

We write on behalf of John Cooney ("Respondent") in response to the complaint filed by Citizens for Responsibility and Ethics in Washington ("CREW"), dated May 9, 2013 (the "Complaint") in the above-referenced matter. The Complaint alleges that Respondent exceeded the 2011-12 biennial aggregate limit on the amount that individuals can contribute to candidates for federal office. In fact, Respondent did not exceed this limit. It appears that several committees that received partnership contributions from the law firm in which the Respondent is a partner, Cooney & Conway, attributed contributions to him when they should have been attributed to his partners. Accordingly, the Commission should find no reason to believe that Respondent violated the Federal Election Campaign Act of 1971, as amended (the "Act"), as alleged; or otherwise use its discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985), to dismiss this matter immediately.

Pursuant to 2 U.S.C. § 441a(a)(3)(A) and 11 C.F.R. § 110.5(b)(1)(i), individuals are currently limited in the total amount of contributions that they may make to federal candidates in an election cycle.¹ Between January 1, 2011 and December 31, 2012, the limit was \$46,200.² The Complaint alleges that Respondent made \$47,500 in contributions to federal candidates in 2011 and 2012, exceeding the biennial limit by \$1,300. This is not the case.

¹ A challenge to the constitutionality of this restriction is currently pending before the U.S. Supreme Court. See *McCutcheon, et al. v. FEC*, U.S. Supreme Court (12-536).

² See Federal Election Commission, "Contribution Limits for 2011-2012," available at <http://www.fec.gov/info/contriblimits1112.pdf>.

Respondent is a partner in Cooney and Conway, a law partnership located in Chicago, Illinois (the "Partnership"). Respondent made individual federal political contributions in 2011 and 2012. The Partnership also made federal political contributions in 2011 and 2012, some of which were attributed to Respondent and some of which were attributed to other partners in the firm. In accordance with 11 C.F.R. § 110.1(e)(2), a partnership may make federal contributions, attributing the contribution among its partners in direct proportion to the amounts that each partner's profits are reduced. When a contribution by the Partnership, or a portion thereof, is attributed to a specific partner, the Partnership decreases the draw of that partner on the firm's profits by a corresponding amount.

Upon receipt of the Complaint, Respondent reviewed the contributions attributed to him on reports filed with the Commission and discovered that several contributions made by the Partnership, which should have been allocated amongst its partners in line with the amounts that their draws were decreased, appear to have been incorrectly reported as contributions from Respondent himself. For example, the Partnership made a contribution to Citizens for Rush by check dated May 16, 2011 in the amount of \$1,000. The Partnership reduced the draw of partner Kevin Conway by the entire amount of the contribution, and accordingly, the contribution should have been attributed to him.³ However, the contribution was reported as being made by Respondent.⁴ Similarly, the Partnership made a contribution to Friends of Tim Johnson by check dated November 1, 2011 in the amount of \$2,000. The Partnership reduced the draws of Robert Cooney Jr., William Fahey, Kevin Conway and Respondent by \$500 each, and accordingly, the contribution should have been attributed among the four partners.⁵ However, the entire contribution was reported as coming from Respondent himself.⁶ Respondent has alerted these committees of this issue, and asked them to amend their relevant reports to reflect the appropriate attribution of the Partnership's contributions.

The Complaint counted the Partnership contributions made to Citizens for Rush and Friends of Tim Johnson as contributions from Respondent himself when asserting that Respondent exceeded the biennial aggregate contribution limit to candidates by \$1,300. Together, just these misattributed contributions add up to \$2,500 incorrectly counted towards Respondent's limit. With the proper attributions of these contributions in mind, it is clear that Respondent gave less than \$46,200 to federal candidates in 2011-12.

³ See Attachment A, Cooney and Conway Check Distribution Details, indicating that the contribution should be debited against the draw of Kevin J. Conway with the initials "KJC."

⁴ See Attachment B, pages from Citizen for Rush's July 15 Quarterly Report, 2011.

⁵ See Attachment C, Cooney and Conway Check Distribution Details, including the attribution formula.

⁶ See Attachment D, pages from Friends of Tim Johnson's January 31 Year-End Report, 2012.

2024-04-21

Very truly yours,

Marc E. Elias
Graham M. Wilson
Counsel to Respondent

Attachment B

**FEC
FORM 3****REPORT OF RECEIPTS
AND DISBURSEMENTS**

For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT ▼ Example: If typing, type over the lines. 12FE4M5

Friends Of Tim Johnson

ADDRESS (number and street)

PO Box 17097

Check if different
than previously
reported. (ACC)

Urbana

IL

61803-7097

2. FEC IDENTIFICATION NUMBER ▼

C C00350421

CITY ▲

STATE ▲

ZIP CODE ▲

STATE ▼ DISTRICT

3. IS THIS
REPORT

X

NEW
(N)

OR

AMENDED
(A)

IL

13

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:

April 15 Quarterly Report (Q1)

July 15 Quarterly Report (Q2)

October 15 Quarterly Report (Q3)

X January 31 Year-End Report (YE)

Termination Report (TER)

(b) 12-Day PRE-Election Report for the:

Primary (12P)

General (12G)

Runoff (12R)

Convention (12C)

Special (12S)

Election on

M M / D D / Y Y Y Y
03 06 2012in the
State of

IL

(c) 30-Day POST-Election Report for the:

General (30G)

Runoff (30R)

Special (30S)

Election on

M M / D D / Y Y Y Y
03 06 2012in the
State of

IL

5. Covering Period

M M / D D / Y Y Y Y
10 01 2011

through

M M / D D / Y Y Y Y
12 31 2011

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Randi Parr

Signature of Treasurer

Randi Parr

[Electronically Filed]

Date

M M / D D / Y Y Y Y
01 31 2012

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

Office
Use
Only**FEC FORM 3**
(Revised 02/2003)

SCHEDULE A (FEC Form 3)
ITEMIZED RECEIPTS

 Use separate schedule(s)
 for each category of the
 Detailed Summary Page

FOR LINE NUMBER: PAGE 15 OF 120

(check only one)

☒ 11a ☐ 11b ☐ 11c ☐ 11d
☐ 12 ☐ 13a ☐ 13b ☐ 14 ☐ 15

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

Friends Of Tim Johnson

A. Full Name (Last, First, Middle Initial) Dr. Ray and Anne Capestrain		Date of Receipt M M / D D / Y Y Y Y 11 / 01 / 2011	
Mailing Address 1290 Churchill Road		Transaction ID : A-C15191	
City Springfield	State IL	Zip Code 62702-3493	Amount of Each Receipt this Period 250
FEC ID number of contributing federal political committee. C			
Name of Employer Memorial Medical Center	Occupation Physician		
Receipt For: 2012 <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Election Cycle-to-Date 250		
B. Full Name (Last, First, Middle Initial) Robert Clifford		Date of Receipt M M / D D / Y Y Y Y 11 / 01 / 2011	
Mailing Address 840 N Lake Shore Drive # 2501		Transaction ID : A-C15353	
City Chicago	State IL	Zip Code 60611-2489	Amount of Each Receipt this Period 2000
FEC ID number of contributing federal political committee. C			
Name of Employer Clifford Law	Occupation Attorney		
Receipt For: 2012 <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Election Cycle-to-Date 2000		
C. Full Name (Last, First, Middle Initial) John Cooney		Date of Receipt M M / D D / Y Y Y Y 11 / 01 / 2011	
Mailing Address 2238 N Fremont Street		Transaction ID : A-C15359	
City Chicago	State IL	Zip Code 60614-3614	Amount of Each Receipt this Period 2000
FEC ID number of contributing federal political committee. C			
Name of Employer Self	Occupation Attorney		
Receipt For: 2012 <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Election Cycle-to-Date 2000		
SUBTOTAL of Receipts This Page (optional)		4250.00	
TOTAL This Period (last page this line number only)			